

0108-354 US-1
Amendment dated 03/01/2007

10/798,845
Reply to office action mailed 12/01/2006

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REMARKS

Claims 1-15 are currently pending in the application. By this amendment, claims 1, 5, 9, 10 and 12 are amended for the Examiner's consideration. The foregoing separate sheets marked as "Listing of Claims" show all the claims in the application, with an indication of the current status of each .

In the specification, amendments have been made and section headings have been added to clarify the structure of the application.

The Examiner has objected to certain informalities in claims 12 and 15, which have been corrected by the foregoing amendments.

The Examiner has rejected claims 1, 5, 9, 10, 12 and 13 under 35 U.S.C. §112 for lack of antecedent basis for certain limitations. The foregoing amendments overcome this ground of rejection. It is noted that claim 13 depends from claim 11, which in turn depends from claim 1, and that the limitation "the signaling arrangement" in claim 13 therefore has antecedent basis in "a signaling arrangement" in claim 1.

The Examiner has rejected claims 1-7 and 9 under 35 U.S.C. §102(b) as being anticipated by European Patent Application 0 141 640 A1 to Brown. Brown discloses an optical switch 46, 47 which serves for detecting the unlatching of plunger 18 from socket 34. While the Examiner has correctly cited page 4, lines 29-34 in this regard, the Examiner has not considered the next sentence on page 4, lines 34-37, which discloses that the detection of unlatching is used "to adjust the solenoid current as described more fully below and thereby prolong battery life."

As will be understood from Fig. 2 of Brown, the detection of unlatching (i.e. switching of opto-switch 46, 47) is used to reduce the current through the solenoid from a current sufficient for pulling the plunger out of the socket to a lower current which is just sufficient to hold the plunger in a lifted position. After a predetermined period the current is switched off so that the plunger may then again latch the

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artificial joint in the extended position. The Examiner argues that the Brown mechanism discloses the signaling arrangement claimed for the present invention.

However, it will be observed that the detection mechanism described in Brown serves as a signal to control the plunger. By contrast, the signaling arrangement of the present invention has a different meaning and function entirely. As described at page 1, lines 35-39, a problem with the prior art is the risk that the knee joint may buckle if the patient fails to notice that the locked position has not been reached when a load is placed on the orthotic knee joint. Consequently, “the signaling arrangement” of the present invention is such as to provide notice to the patient, as described at page 2, lines 27-36, and page 3, lines 3-22. No such notice is disclosed in Brown. Therefore, Brown fails to disclose an indicator signal or warning signal to the user of the orthopedic aid characterizing the locking state (i.e. the latched state) or the unlocking (i.e. unlatching) of the locking device. The claims have been amended to clarify this distinction.

The Examiner has rejected claims 8 and 11-15 under 35 U.S.C. §103(a) as being unpatentable over Brown in view of U.S. Patent No. 6,184,797 to Stark et al. (“Stark”). Since claims 8 and 11-15 depend from claim 1, the foregoing argument and amendment showing that Brown fails to disclose the signaling limitation of claim 1 also applies to these dependent claims. Stark discloses an exercising device where there is no reason for locking an artificial joint. Consequently, no signal for a lock state (i.e. latched state) or the unlocking of the joint is produced, and therefore Stark fails to provide the disclosure missing from Brown.

The Examiner has rejected claim 10 under 35 U.S.C. §103(a) as being unpatentable over Brown in view of U.S. Patent Publication No. 2002/0183673 to Naft et al. (“Naft”). Since claim 10 also depends from claim 1, the foregoing argument and amendment showing that Brown fails to disclose the signaling limitation of claim 1 also applies to claim 10. Naft discloses a lockable orthotic joint where a number of signals are produced by sensors, but no signal for the locking state

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or the unlocked state is produced, and therefore Naft fails to provide the disclosure missing from Brown.

Therefore, in view of the above, no combination of the Brown, Stark and Naft disclosures would make obvious to one skilled in the art to provide an orthopedic aid with an indicator signal or warning signal for the locking state or upon unlocking of the locking device, as claimed by the present invention.

The Examiner has made a provisional non-statutory double patenting rejection of claims 1, 3-7, 11-12 and 14-15 based upon another application of the applicant (published as U.S. Patent Publication No. 2005/0039762 and now issued as U.S. Patent No. 7,172,567). It will be noted that both applications have the same priority date, and therefore the policy reasons for concern about improper extension of patent rights do not at this point apply. Consequently, the double patenting rejection may be moot. Moreover, however, the '567 patent does not clearly disclose or claim the present invention. It will be observed, for example, that the disclosure cited above (page 1, lines 35-39; page 2, lines 27-36; page 3, lines 3-22) to distinguish Brown, Stark and Naft, is missing from the '567 patent disclosure. Instead, the '567 patent is concerned with a different problem, namely, the awkwardness of activating the unlocking means (page 1, last sentence of ¶0002). The solution provided by the '567 patent is to provide a remotely located actuating unit, preferably integrated into a walking aid (¶¶0005-0007).

While it is true that the '567 patent describes in summary form "signaling arrangements of the actuating unit" (¶0009), this summary description does not provide the clarity of the disclosure of the present invention, for example, in supporting the aspect of the present invention wherein the warning signal is for alerting the user (as now claimed). Indeed, the disclosure of the '567 patent indicates that the "acknowledgement signal or warning signal" can be used "to trigger" the signaling arrangements (i.e. visual, acoustic or vibration). It is not stated expressly

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what function is provided by the visual, acoustic or vibration signals. This is left to inference.

There is no enabling expression of the functionality disclosed in the present invention, namely, alerting the user. Note that in claims 6, 7, 9 and 10 of the '567 there is no reference to a user. Further, it will be observed that the independent claim of the present invention makes no reliance upon or limitation of the means which may be taken by the user to lock or unlock the orthopedic aid or respond to the notice provided. By contrast, the independent claim of the '567 patent contains as a limitation a control unit that electromechanically actuates the locking device to the locked or the unlocked position. The circumstance of reliance upon this electromechanical mechanism means that any visual display, acoustic signal or vibration (as described in claims 6, 7, 9 and 10) will simply confirm the control objective (locking or unlocking) already initiated at the actuating unit. By contrast, the disclosure of the present invention describes a need to alert a user, e.g. to failure of the orthotic joint to reach the locked position (page 1, lines 35-36), as the amended claims now clarify. Neither this disclosure nor the corresponding claim limitation are present in the '567 patent.

Thus, it is respectfully submitted that neither of the Examiner's assertions in support of a double patenting rejection is correct: the subject matter claimed in the instant application is not fully disclosed in the copending application (now the '567 patent), and the present claims would not be properly presentable and supported in the copending application (now the '567 patent).

In view of the foregoing, it is requested that the application be reconsidered, that claims 1-15 be allowed, and that the application be passed to issue.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at 703-787-9400 (fax: 703-787-7557; email: clyde@wcc-ip.com) to discuss any other changes deemed necessary in a telephonic or personal interview.

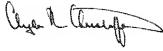
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If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Sincerely,

A handwritten signature in black ink, appearing to read 'Clyde R. Christofferson', with a long, sweeping horizontal stroke at the end.

Clyde R Christofferson

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